IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Food Corporation of India and Ors. vs. The Kota Co-operative Marketing Society Ltd.

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S.B. Civil First Appeal No.20/1989 under Section 96 read with Order 41 rule 1 C.P.C. against the judgment and decree dated 21.07.1988 passed by Shri Raja Ram Verma RHJS, Additional District Judge No.1, Kota in Civil Suit No.116/1981 decreeing the suit of the plaintiff respondent.

Date of Judgment :::::: November 03, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.Amit Sharma for appellants.

BY THE COURT (ORAL):-

The facts in brief giving rise to this appeal are that the plaintiff respondent filed a suit against the

defendant appellant for recovery of a sum of Rs.15,317.76 alleging therein that the plaintiff worked as handling and transportation agent of the defendant for purchasing the food grains in Kota district from 1972 as per the contract. In the year 1974-75 the plaintiff was appointed agent for purchasing of food grains and as handling and transportation agent for Sultanpur and Kota on the terms and conditions mentioned in the contract. The defendant No.3 made payment of the bills of the plaintiff. It was mentioned that defendant No.3 vide its letters dated 20.4.1977 and 28.7.1977 informed the plaintiff that as per the objection of the internal audit Rs.8820.16 and Rs.4677.60 were to be recovered from the plaintiff. The plaintiff replied the letters mentioning that it has received the payment of the bills after getting the same verified from the Quality Inspector and no payment was made for the work for which there was objection from the Quality Inspector. It was mentioned that as no rejoinder of the letter was given, therefore, the plaintiff was of the view that the defendants were satisfied by its reply and the sanction was issued. The case of the plaintiff is further to this effect that thereafter the defendants deducted amount of Rs.8820.16 and Rs.4677.60 from the due amount of the plaintiff for which it is entitled. It was then mentioned that as the defendants have wrongly deducted

the amount and deprived the plaintiff to its use, therefore, the plaintiff is entitled to get interest @12% per annum. Despite notice through advocate when the defendants did not make payment of the due amount, the plaintiff filed the suit for recovery of Rs.13,497.76 as principal amount and Rs.1820/- as interest till the date of filing of suit.

In the written statement, the defendants have come with this plea that excess payment was made to the plaintiff and when this mistake was pointed out during the internal audit, the amount was deducted from the bills of the plaintiff. It was mentioned that the plaintiff did not prepare the bills as per the work slip and that the plaintiff submitted bills for the work which was not done by it. Therefore, the excess amount which was paid to the plaintiff by mistake was recovered from the plaintiff.

Learned trial court after framing issues and hearing both the sides decreed the suit of the plaintiff-respondent vide impugned judgment dated 21st July, 1988 for Rs.15317.76 with interest of 12% from the date of judgment till realisation on the principal sum i.e. Rs.13,497.76. Hence, this appeal.

Heard learned counsel for the parties.

Learned counsel for the appellant has contended that the learned trial court has neither properly appreciated nor critically examined the evidence of the parties and thus, committed error in recording finding in favour of the plaintiff and in decreeing the suit of the plaintiff respondent.

After hearing learned counsel for the appellants, I have gone through the material and evidence available on record as well as the impugned judgment.

Sofar as issue No.1 is concerned the case of the plaintiff respondent solely based on the documentary evidence. The plaintiff respondent has placed on record the tender notice as Ex.A.1 containing the terms and conditions of the tender. It is pertinent to mention here that both the parties have admitted this position that the defendant respondents have made payment of all the bills submitted by the plaintiff after verification and necessary deductions and the defendants put no condition regarding recovery of the amount in future as per the objections if raised by the audit. It is the case of the defendant appellants that due to mistake over payment was made to the plaintiff which

could be detected only during audit and therefore, the same was deducted from the other bills of the plaintiff. In support of its claim the plaintiff has produced the bills submitted by it, which have been marked as Ex.A-2, A-4, A-6, A-8, A-11, A-13, A-19, A-21, A-23, A-24, A-25, A-27, A-29, A-32, A-34, A-37, A-41, A-49, A-51, A-54, A-58, A-60, A-62 and A-63 which have been prepared on the basis of work-slips issued by the defendant appellants and produced on record as Ex.A-3, A-5, A-7, A-9, A-12, A-14, A-16, A-20, A-22, A-24, A-26, A-30, A-33, A-35, A-36, A-38, A-39, A-42, A-43, A-45, A-46, A-47, A-48, A-50, A-52, A-53, A-55, A-56, A-59, A-61 and A-64. From these documents it is clear that the bills were prepared as per the work-slips issued by the Quality Inspector, Food Corporation of India, Kota and the same are duly verified by Quality Inspector. The bills also show the necessary deductions in the same. As against this, the defendant-appellants have filed Schedule of deductions mentioning the deductions made from the bills as per the audit objection. The plaintiff respondent has also come with this case that in the bills submitted by it for payment there is clear mention about clause Gha-I of the work contract and the defendants made payment of the bills after going through the same. It was also the case of the plaintiff that there was no clause in the work contract that in case payment is made and any objection is raised by

the audit, the amount was recoverable or that it could be deducted from the future bills. There was also no clause in the work contract that the work performed by the plaintiff samiti was liable to be finalised by the auditor and if any amount found recoverable, the plaintiff samiti was liable to make payment of such amount.

The reasons for deduction as mentioned in the schedule placed on record by the defendants are (i) non-performance of weighment at Railway Head at the time of dispatch and receipt, (ii) for non-performance of work of screening at the time of paddy purchase under item No.Kha-I, (iii) for non-performance of filling of bags, standardisation and weighment, (iv) non-performance of screening, filling and weighment, non-performance of stenciling of 9711 bags and (v)for non-performance of weighment at Railway Station. It is also the case of the defendant appellants that as per clause Gha (1) of the work contract, it was the duty of the plaintiff to get the food-grains weighed at the Railway Station but the plaintiff failed to do so. Therefore, they have deducted the excess amount paid to the plaintiff. But to prove the above facts, defendants have not adduced any oral evidence. Suffice to say that it is admitted by both the parties to the suit that defendant deducted amount of Rs.13,497.76/- on account of excess payment from the future

bills of the plaintiffs submitted after finalisation of the payment under contract in dispute. Therefore, there was no justification in deducting any amount from the future bills of the plaintiff. Therefore, I am of the opinion that the learned trial court has committed no error in deciding issue No.1 in favour of the plaintiff-respondent and against the defendant appellants.

Sofar as the finding of the learned trial court on issue No.2 is concerned, learned counsel for the appellants has not been able to show that awarding of interest 12% per annum on the amount illegally deducted from the bills of the plaintiff Samiti is illegal in any manner. It was a commercial transaction between the parties and therefore, I do not find any ground to interfere in the finding of the trial court on issue No.2 regarding award of interest.

No other point was raised.

For the discussions above, the first appeal fails and is hereby dismissed with no orders as to cost.

(K.C.Sharma),J.

Bairwa